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In the Supreme Court
of the United States

OCTOBER TERM, 1955

HAWAIIAN PINEAPPLE COMPANY, LTD.,
a corporation,

Petitioner,

vs.

MARTIN E. ADEN, et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Hawaiian Pineapple Company, Ltd. (hereafter "Petitioner" or "Pineapple") prays that a writ of certiorari issue to review that part of the judgment of the United States Court of Appeals for the Ninth Circuit, affirming a judgment entered in the United States District Court for the District of Oregon against Petitioner and in favor of 99 individuals, Martin E. Aden, et al, *the writ to issue only in the event* this Court should grant the petition for a writ of certiorari filed at this Term by International Longshoremen's & Warehousemen's Union (CIO) (hereafter "International") and International Longshoremen's & Warehousemen's Union, Local 8 (hereafter "Local").

OPINIONS BELOW

The opinion of Judge Fee of the United States District Court for the District of Oregon denying, respectively, Petitioner's motion for a partial new trial and the motion of International and Local for judgment notwithstanding the verdict and for a new trial, is reported as *Curto v. International Longshoremen's Union,* in 107 F. Supp. 805 and appears in the printed record at pages 149-177.

The opinion of the Court of Appeals for the Ninth Circuit written by Circuit Judge Chambers for himself and Circuit Judges Healy and Bone is reported in 226 F. (2d) 875 and appears in the printed record at pages 1497-1521.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on October 25, 1955 (R. 1522). Timely petitions for rehearing were filed both by Pineapple and by International and Local and were each denied on January 11, 1956 (R. 1523). The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

In an action brought against two unions for violating Section 303 (a) (1) (the "secondary boycott" provisions) of the Labor Management Relations Act, 1947, 61 Stat. 158, 29 U.S.C.A. (Supp. 1955), Sec. 187, and against the unions and 99 individuals for engaging in unlawful common law acts, pursuant to a conspiracy, the trial court

refused to submit to the jury the issue of the common law liability of the individuals for their unlawful acts causing damage, separate and apart from their liability as co-conspirators with the two unions.

Instead, the trial court over objection instructed that a verdict could be rendered against the individuals only if (1) one or both the unions was liable under the Act and (2) the individuals had entered into a conspiracy with either or both of the unions to restrain trade and to (in effect) violate the secondary boycott provisions of the Act.

The questions presented are:

1. Whether the liability of the individuals for their tortious common law acts should have been directly submitted to the jury.

2. Whether the trial court's instructions as to the liability of the individuals were erroneous.

STATEMENT

Stemming out of the nationally publicized "pineapple riot" staged at the Port of The Dalles, Oregon, on the Columbia River on September 28, 1949, this case involves an action instituted by Pineapple against International, Local and 99 individual longshoremen to recover damages for injuries to its business and property sustained by reason of the unlawful activities of the defendants.

The action was tried before a jury who returned a verdict of $201,274.27 in favor of Pineapple and against

the two unions. However, the jury (in the language of the Court of Appeals) "about-faced" and rendered a verdict in favor of the individuals and against Pineapple (R. 136).

The Basic Facts

The basic facts involved in this case were succinctly summarized by District Judge (now Circuit Judge) James Alger Fee in his detailed opinion denying the motions for a new trial:

> "The evidence tended to show the situation which will be hereinafter set out. Owing to a tie-up of transportation from Hawaii caused by the activity of International and affiliated local unions in the Territory, Pineapple, in order to convey a cargo worth approximately half a million dollars, which was intended ultimately for a processing plant owned by a subsidiary in California, had chartered the navy barge YFN624, which was loaded with facilities and by employees of Isleways, Ltd., a wholly owned subsidiary. This barge was towed across to the mainland by the ocean going tug "Ona," owned by Isleways. Upon arrival of the barge in the harbor of Tacoma, Washington, it was impossible to unload the cargo there, owing to resistance among labor groups in that port, engendered directly or indirectly by International. Thereafter the barge was turned over to a river tow boat by the Ona and was brought up the Columbia River ninety miles past Portland to The Dalles, Oregon, on September 24, 1949. Before its arrival there, Matt Meehan, who was a representa-

tive of International in the area, engaged in a series of conferences with officials of the Port of The Dalles, wherein he insisted that the cargo be not unloaded and that the facilities be not furnished to the barge. His address was truculent and aggressive. An Hawaiian, claimed to be a member of a local union there affiliated with International, was flown from the islands and arrived at The Dalles. There were meetings of the members of Local in its hall at Portland, Oregon, at which Meehan was present and took part in the discussion. The next morning members of Local, to the number of from two hundred fifty to four hundred, proceeded in small groups by private cars to The Dalles, a distance of ninety miles. There members of Local and the Hawaiian formed a picket line outside the dock of the Port of The Dalles, a municipal corporation.

"After the picket line had been maintained for some days, certain of the longshoremen, hearing of the approach from outside the state, of teamsters belonging to a local teamsters union in California but who were engaged by Pineapple, met these employees at a point several miles from the dock, gave them an outline of conditions there and attempted to prevent their going further. However, two trucks went upon the dock in the morning and, when one of these had been loaded, the supervisor drove out and led two other trucks with drivers and helpers through the picket line and into the dock enclosure. Thereupon, in a riotous, threatening and violent manner, the longshoremen broke through the cordon

of local police and rushed onto the dock. Some of them assaulted each of these employees of Pineapple. Two, in particular, were set upon by the longshoremen, who kicked them, beat them, and threatened them with death. The truck drivers were thus coerced into submission and, under threat of death or great bodily harm, promised not to interfere further. The four trucks returned to California empty.

"The longshoremen, who rushed upon the dock at the time, proceeded to the dock's edge, having armed themselves with various weapons which they were able to pick up, attempted to damage a crane and threw some four hundred cases of pineapple into the Columbia River and attempted ineffectually to set the barge adrift. Thereafter, the longshoremen were recalled from the dock and gathered in a group outside the boundaries of the Port, where they were addressed by Meehan, who is said to have complimented them upon the measures which they had just taken, but instructed them to remain outside the property. Thereupon, the picket line dispersed. * * * A number of the individuals who had gone on the dock were arrested, indicted and convicted of the crime of riot in the Circuit Court of the State of Oregon by pleading guilty to an indictment (here introduced in evidence) which charged, in part, that each of them 'did then and there unlawfully, wilfully, routously and riotously trespass upon inclosed premises not their own, or either of them, namely, the

premises of the Port of The Dalles; and did then and there unlawfully, routously, riotously and feloniously make an assault upon Don Higham, Eugene Hoard, Elvy Davis, Clarence Rosales and Raymond Curto, by then and there unlawfully and feloniously striking and beating them with said cargo hooks, iron bars, clubs and sticks'." (R. 150-152)

Twenty-two individuals pleaded guilty to the crime of riot. Thirty-eight others admitted they went upon the dock during the riot and thirty-two others admitted they were at or near the Port dock.

As the result of the riot, the Port of The Dalles was forced to discontinue the unloading of the barge. Pineapple's crane and trucks were put out of commission, and repairs could not be effected to the crane until about ten days after the riot (R. 486, 686, 1038, 1040).

By the time the crane was repaired, however, Pineapple had sustained the largest element of its damages. Pineapple's plant at San Jose, California, had previously purchased large quantities of perishable fruits to be mixed with cherries and pineapple from the barge in the preparation and canning of "fruit cocktail". To prevent the spoilage of these fresh fruits while awaiting the arrival of the pineapple on the barge, Pineapple's plant had been forced to process and can them into a mixture known as "fruit mix". By the time the crane was once again in operation, the San Jose plant had been forced to process and can all of the fresh fruit into fruit mix. Inasmuch as there was no market for fruit mix, Pineapple was required

to reprocess all of it, after the eventual receipt of the pineapple from the barge in California, so as to make fruit cocktail.

Accordingly, the items of damage for which Pineapple sought redress included not only the extra expense to which it was put by being forced to reprocess the fruit mix into fruit cocktail, but also the various other damages sustained by it: truck and crane repairs, lost cases of pineapple, cut mooring lines and destroyed gangway, medical and hospital expenses of injured employees, charter hire of the tug and barge which were forced to lie idle, special police costs, etc.

Pineapple's Action (Jurisdiction)

To recover the damages it sustained, Pineapple instituted an action against International, Local and 99 individual longshoremen alleging that these defendants had engaged in various specified activities, pursuant to a conspiracy, which activities on the part of the labor unions constituted a violation of Section 303 (a) (1) of the Labor Management Relations Act, 1947, 61 Stat. 158, 29 USCA (Supp. 1952) Sec. 187, and on the part of the individuals were tortious acts under the common law.

The jurisdiction of the District Court, insofar as the two unions were involved, was based on Section 303 (b) of the Act, it being admitted that International and Local were each a "labor organization" under Section 501 (3) of the Act and that the action involved an "industry or activity affecting commerce" under Section 501 (1) of the Act (R. 50-51, 157, 1050).

The jurisdiction of the District Court, insofar as the individuals were concerned, was based on 28 USCA Sec. 1332 (Diversity of Citizenship), it being admitted that Pineapple was a Hawaiian corporation and that the individuals were citizens of states or territories other than Hawaii, with the amount in controversy exceeding $3,000.00 exclusive of interest and costs (R. 50, 51-52).

After extended pretrial conferences (R. 183-348), the District Court entered a Pre-Trial Order which by its terms superseded the pleadings (R. 76). The Pre-Trial Order set out the contentions of the parties and the issues raised thereby.

In its contentions in the Pre-Trial Order, Pineapple alleged the various unlawful actions committed on September 28 by the individuals in violently entering the port dock and staging a riot thereon with consequent damage to Pineapple's business and property, which allegations were denied by the individuals (R. 58-59, 61-63, 65).

Specifically framed as "issues" in the Pre-Trial Order were those of whether the individuals "engaged in the acts and conduct alleged" by Pineapple (Issue 8; R. 67); and, if so, whether such acts and conduct were the proximate cause of damage to Pineapple and, if so, in what amount (Issues 9, 10, 11; R. 67).

On the issues thus posed, Pineapple at the trial presented direct and uncontradicted proof (according to both the opinions of the trial court and the Court of Appeals)

that the individual defendants engaged in unlawful acts by their riotous conduct on September 28 and that these unlawful acts were the direct and proximate cause of damage to Pineapple's property and business. Yet the trial court, as noted below, failed and refused to submit to the jury the issue, so raised and supported by the proof, of the liability of the individuals for their unlawful acts.

The Trial Court's Instructions

The trial court instructed the jury at length concerning the liability of either or both unions for violating Section 303 of the Act, which instructions are presently the basis for the petition for a writ of certiorari filed at this Term by International and Local.

As to the liability of the individuals, the trial court (to the surprise of all parties, no such instructions having been previously submitted or discussed) instructed the jury that an individual defendant could only be found liable (1) *if* one or both unions was found liable under the Act (Tr. 1435-1440); (2) and *if* the individual was a member of a "conspiracy" between either or both of the unions and the individual defendants (Tr. 1436-1437, 1448-1450); (3) and *if* the "conspiracy" involved was one (a) to restrain trade and commerce between Hawaii and any state and (b) to violate (in effect) the provisions of Section 303 (a) (1) of the Act[1].

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[1]The Court of Appeals agreed with Pineapple's objection that the trial court erred in instructing that an individual could not be found liable unless the unions were first found liable, but went on to hold that the jury finding of liability against the unions, in effect, "cured" this error (R. 1508).

Secondly, the trial court failed and refused to give any instructions whatsoever, despite previous requests made by Pineapple, with respect to the common law liability of the individuals for their unlawful invasion of the dock, separate and apart from any question of their liability as co-conspirators with International and Local. The specific instructions requested by Pineapple are set out in Appendix "A" attached to this petition.

Thus, the liability of an individual defendant was submitted to the jury solely on the basis of whether he was a conspirator with either or both unions to restrain trade between Hawaii and any state and to violate the prohibitions of Section 303 (a) (1) of the Act.

By its exceptions (which appear in Appendix "B" to the Opinion of the Court of Appeals and are set out in the record at pages 1450-1451), Pineapple put the court on notice of its cause of action against the individuals for damages flowing from "to just physically stop a business operation in connection with the riot and other activities they engaged in", and objected to the failure of the trial court to instruct the jury that Pineapple could recover against the individuals on this basis rather than under the Labor Management Relations Act.

REASONS FOR GRANTING THE WRIT

1. Inasmuch as common law principles are primarily involved in this case, it might not at first glance be deemed sufficiently important by this Court to warrant an independent petition for certiorari, despite its significance to the rapidly developing body of law enunciating

common law liabilities for tortious acts in the course of industrial disputes.

But if this Court were to grant the petition of International and Local for a review of Pineapple's judgment against them, we believe this Court should at the same time review the entire case, including Pineapple's action against the individuals, and correct the manifest error of the court below in affirming the exoneration of the individuals. Accordingly, we are filing this conditional petition.

2. The actual practical effect of the judgment we are protesting in this case is that despite "uncontroverted and incontrovertible evidence" (R. 1508) that at least sixty of the individual respondents unlawfully went on the port dock and there rioted against Pineapple, injuring its employees and damaging its business and property, not one of such individuals was held liable.

The jury's verdict in this respect was a true miscarriage of justice under which violence has been sanctioned and individuals have been allowed to escape liability for their unlawful acts.

We say this unjust verdict (even acknowledged to be so, in part, by the Court of Appeals) resulted from the failure of the trial court to allow the jury to separately pass upon the liability of the individuals for their riotous activities and was further due to errors committed by the trial court in the actual instructions it gave to the jury with respect to their liability.

3. We recognize that this Court is not designed to give a losing party before the Court of Appeals another hearing, nor is it concerned primarily with the correction of errors. Should this Court decide to review this case, however, we submit that this unjust verdict exonerating the individuals calls for the exercise of this Court's power of supervision, inasmuch as it sanctions a complete departure from accepted and customary rules in determining the liability of individuals for their tortious acts.

It is fundamental (under both Federal and Oregon decisions) that a charge of conspiracy is not the gravamen of a complaint. Even if a conspiracy were not proved, Pineapple would still have been entitled to recover damages against such of the individuals as were shown to have been guilty of unlawful acts directly resulting in damage to it. *James v. Evans,* 149 F. 136 (CA 3, 1906); *Keller v. Commercial Credit Co.,* 149 Or. 372, 40 P. (2d) 1018 (1935); *Gabriel v. Collier,* 146 Or. 247, 255, 29 P. (2d) 1025, 1028 (1934); see *Howland v. Corn,* 232 F. 35, 40 (CA 2, 1916); *Ewald v. Lane,* 104 F. (2d) 222 (CA, D.C., 1939), cert. denied, 308 U.S. 568.

All of the individuals, who participated in the unlawful invasion of the dock and rioting against Pineapple, were liable to it under the common law for the damages flowing from their acts irrespective of their degree of participation. See *Calcutt v. Gerig,* 271 F. 220 (CA 6, 1921); *Saunders v. Gilbert,* 156 N.C. 463, 72 S.E. 610 (1911); *Meints v. Huntington,* 276 F. 245 (CA 8, 1921); 46 Am. Jur., Riots and Unlawful Assembly, Sec. 18, p. 135; Restatement of Torts, Section 876.

Accordingly, in its action Pineapple predicated the liability of the individual defendants upon the legal basis that they had engaged in various unlawful activities, pursuant to an alleged conspiracy with the unions to injure Pineapple's business. The individual defendants could therefore be liable in two ways: they and the unions were part of an unlawful conspiracy to injure Pineapple's business and property; or the individual defendants had engaged in various unlawful acts, the principal one being the unlawful invasion of the dock and the destruction of Pineapple's property and injury to its employees. If the conspiracy charge was not proved, Pineapple was still entitled to recover the damages it sustained as a result of the unlawful acts of the individual defendants.

The trial court departed from these well accepted principles when it failed and refused to submit to the jury the issue of the common law liability of the individuals for their riotous activities of September 28. The instructions submitted by Pineapple would have squarely submitted to the jury this issue and would have allowed the jury to pass directly upon the liability of the individuals regardless of whether they were engaged in any conspiracy with the unions.

The trial court had a mandatory duty of submitting to the jury every material fact raised by the pleadings and supported by the evidence. *Best v. District of Columbia*, 291 U.S. 411, 415 (1934). Failure to submit such an issue for the jury's consideration is error. *Marande v. Texas & Pacific Railway Co.*, 184 U.S. 173 (1902); *Cal-*

len v. Pennsylvania Railroad Co., 332 U.S. 625 (1948). Such a failure to submit an issue constitutes the direction of a verdict against the aggrieved party on that issue, but a verdict only may be directed if there is a mere scintilla of evidence or none at all. This was hardly the state of the evidence with respect to the tortious acts of the individuals.

The prejudice that resulted from the failure of the trial court to submit the naked issue of the liability of the individuals, regardless of any alleged conspiracy with the unions, was that they were deprived of having the jury pass upon the simplest and best case that Pineapple had against the individuals, namely, whether the individuals, or any of them, engaged in unlawful acts against Pineapple which resulted in damage to it.

4. Further indicative of the need for a supervisory review by this Court is the situation that Pineapple's contentions as to the errors committed by the trial court (as set forth in its motion for a partial new trial and in its Specifications of Error on appeal) have never even been stated by the trial court or the Court of Appeals, as raised by Pineapple, let alone answered by either court.

The position taken by the Court of Appeals was that Pineapple tried its case against the individual defendants on an "all-or-nothing" basis of getting the same total set of damages from the individuals as from the two unions; and the verdict in favor of the individuals meant that the jury decided Pineapple was not entitled to the same damages against the individual defendants as it was entitled to against the union. Pineapple was said by the

Court of Appeals to have placed itself in a"strait-jacket" as to damages by stating an oral preference for a form of verdict in which only one amount of damages could be inserted by the jury as against the unions and the individual defendants found liable.

Such an opinion does not answer Pineapple's contentions. Whether or not Pineapple, willingly or through the action of the trial court, was placed in what the Court of Appeals called a "strait-jacket" as to damages, the uncontroverted fact remains *that there was never presented to the jury* for its determination Pineapple's contentions that its damages flowed from the riot and the resulting consequences and that the individual defendants who participated in the physical invasion of the dock and the riot were jointly liable for the damages proximately resulting therefrom.

The flaw in the Court of Appeals' reasoning, as we see it, was its assumption that there was a significant difference between the total damage for which the unions were held liable and the total damage for which the individual defendants could have been held jointly liable. We know of no basis for any such assumption in the record.

When the Court of Appeals states that Pineapple "did not focus on the damage at the dock, but let the case go on an all-or-nothing basis", it is not dealing fairly with Pineapple.

If there was one aspect of the case on which Pineapple focused above everything else (and on this we

guarantee that opposing counsel will agree), it was the physical invasion of and the riot on the dock and the ensuing and resulting damage to Pineapple. If there was any letting "the case go on an all-or-nothing basis", it was that the participating individual defendants were liable for the common sum or total set of damages involved on the basis of (1) the conspiracy with the unions to injure Pineapple's business or (2) the riot and consequential damage therefrom.

Regardless of whether or not the conspiracy basis for the liability of the individual defendants was proven, Pineapple was still entitled by reason of its pleadings, proof, and requested instructions, to have the alternative basis for the liability of the individual defendants submitted to the jury. This the trial court failed and refused to do, and the Court of Appeals has lent its stamp of approval, even though itself acknowledging the injustice involved.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that in the event the Court should grant the petition for a writ of certiorari of International and Local at this Term, this petition for a writ of certiorari should likewise be granted.

Respectfully submitted,

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